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...world's oldest press association, established 1853.

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PETER D. FOX

April 25, 2007

Senator Robert Wirth, Chair  
Senate Committee on Small Business, Emergency Preparedness, Workforce  
Development, Technical Colleges and Consumer Protection  
317 East, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

Dear Senator Wirth and Members of the Committee:

The Wisconsin Newspaper Association (WNA) appreciates the opportunity to appear before your committee to offer comment on 2007 Senate Bill 125. Our association understands this bill is targeted against what its proponents describe as "popular magazines" that employ "aggressive and fraudulent renewal policies." Further, we believe this bill itself would have no impact on how Wisconsin daily and weekly newspapers conduct their business with their subscribers.

Nonetheless, WNA opposes SB 125 on principle as we believe that this level of government regulation of a private-sector industry is unwarranted. Why a six month period as enunciated in the bill? Why not 12 months – or even three? Further, might there be a parallel imposed on other membership or subscription activities such as book clubs, health clubs, buyers' clubs, insurance renewals, cable or satellite television service? The list goes on and on, as you can see.

Second, SB 125 seems to be an effort to put a legislative fix on an educational problem. Considering the millions of magazines received by Wisconsin citizens every year, is the current level of complaint enough to resort to enactment of new legislation? What responsibility do individual citizens who choose to subscribe to a publication have in maintaining their own payment records? Are state consumer protection resources incapable of acting on public complaints? We see numerous consumer alerts issued by the Department of Agriculture, Trade and Consumer Protection as well as the Department of Justice. If, indeed, these consumer protection professionals determine that "aggressive and fraudulent renewal policies" are being employed by a magazine publisher, is not public information and exposure a more-effective way to combat the problem?



Senator Robert Wirch, Chair

Senate Committee on Small Business, Emergency Preparedness, Workforce Development,  
Technical Colleges and Consumer Protection

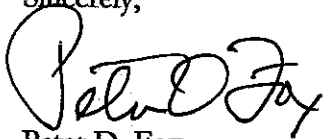
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We understand the concern about predatory practices as described by proponents of SB 125. WNA condemns whatever type of overly aggressive renewal practices attempted by whatever industry that are intended to confuse or mislead subscribers and members. But we believe that public education and consumers exercising individual responsibility are the only appropriate ways to deal with this particular issue.

Again, thank you for this opportunity to comment on the proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter D. Fox". The signature is stylized with a large, looping "P" and a long, sweeping "F".

Peter D. Fox

Executive Director

Wisconsin Newspaper Association



## MEMORANDUM

TO: Interested Parties

FROM: Mike Wittenwyler / Adam Briggs  
Godfrey & Kahn, S.C.

DATE: April 25, 2007

SUBJECT: Senate Bill 125

Senate Bill 125 would create Wisconsin Statute § 100.55, a law that would make it illegal for any "person [to] solicit a subscriber to a periodical to renew the subscriber's subscription more than 6 months before the expiration date of the subscriber's current subscription." S.B. 125 would also require any "solicitation" for renewal to indicate the expiration date of the subscriber's subscription.

To penalize violators, the new Wisconsin Statute § 100.55 would create a new private cause of action enabling "any person suffering pecuniary loss because of a violation of this section" to sue for the extent of that loss, or for \$200.00, whichever is greater, as well as "reasonable attorney fees." The legislation separately empowers the state to restrain a violation of this law by seeking injunctive relief.

### SENATE BILL 125 IS OVERBROAD IN ITS SCOPE

The legislation's use of the terms "periodical," "subscriber," "renew," "person," and "solicit," combined with its sweeping "six month" window, renders S.B. 125 overly broad in a number of problematic ways.

- An array of individuals, small businesses and nonprofit groups unaffiliated with major national publishing companies will be affected, because S.B. 125 can apply to any person or organization and its definition of "periodical" includes even newsletters that are only issued twice per year. S.B. 125 is not explicit in exempting membership organizations, suggesting that local historical societies, hunting clubs and political organizations with annual membership dues and accompanying newsletters might arguably fall within the scope of S.B. 125 if and when they "solicit" members to renew their memberships any earlier than six months prior to their scheduled membership expiration date.
- Community and student groups who sell magazine subscriptions as a means of fundraising would also arguably be subject to penalties under S.B. 125. If, for example, a grade school student knocked on the door of an existing "Newsweek" subscriber and offered that subscriber an opportunity to renew her subscription as a means of supporting the neighborhood school, he could be subjected to penalties under S.B. 125.



- For-profit subscription vendors, who often operate independently from publishers, might violate this law even when attempting to comply in good faith if and when they approach subscribers who have recently and validly renewed through the publisher or another vendor. In the absence of real-time renewal data from all entities in the business of selling subscriptions, even the most well-intentioned and ethical business could be subject to penalties.
- Because “solicit,” “solicitation” and “renew” are not defined in S.B. 125 or elsewhere in Chapter 100 of Wisconsin’s statutes, S.B. 125 arguably extends to virtually any encounter in which someone offers a subscriber an opportunity to extend the duration of their subscription. Retail cashiers and other service providers who offer discounted or free magazine subscriptions to consumers who have initiated a transaction unrelated to any magazine might unknowingly be unlawfully “soliciting” a “renewal” when the consumer they are speaking to has an active subscription that will remain in force for six months or more.
- A publisher’s customer service representatives might arguably be violating Wisconsin law if, during the course of a service call initiated by a Wisconsin consumer, that representative offers – or even grants a request for – a renewal prior to the proposed six-month window.
- S.B. 125 also fails to address whether a subscription card for “People” stapled into a “Time” subscriber’s magazine would violate this law if that “Time” subscriber happened to already have a separate “People” subscription expiring more than six months later. These subscription cards are an essential element of periodical marketing, and publishers could not reasonably be expected to tailor subscription card content to Wisconsin readers based on how soon subscriptions to other magazines might be expiring. Compliance costs could conceivably make magazines unaffordable for Wisconsin consumers.
- The length of the “6 month” period could vary depending on how many 28, 30, or 31 day months immediately precede the subscriber’s expiration date.
- Often the best subscription rates are made available to those subscribers who renew before an early date. If S.B. 125 became law, Wisconsin subscribers would not be able to take advantage of these lower subscription rates offered in connection with early renewals. Wisconsin subscribers, that is, could not be informed of the lowest renewal subscription rates – rates that would still be available to subscribers in other states. Instead, Wisconsin subscribers would only be made aware of the renewal prices available within six months of an expiration date.

In sum, the six month “window” provision is unmanageably overbroad, because individuals, community groups, and businesses with the noblest of intentions will inevitably violate this law by offering a subscription, unknowingly, to a consumer whose expiration date is six months or more away. It is reasonable to expect the initial “subscriber” to know its subscribers’ expiration dates, but forcing this burden upon every other person in the world is not.





## **DAMAGES PROVISION HAS NO PURPOSE**

The text of the damages provision of S.B. 125 is also problematic. In failing to define “pecuniary loss,” the drafters of S.B. 125 do not make clear whether a sooner-than-necessary renewal of a magazine the subscriber would have renewed anyway constitutes “pecuniary loss.” While paying for a renewal sooner than necessary might inconvenience a consumer, this inconvenience arguably does not rise to the level of a pecuniary loss because the consumer will enjoy the benefit of the bargain, albeit some time after the transaction is complete.

## **REDUNDANT WITH EXISTING LAW**

S.B. 125 is generally redundant and unnecessary because its only likely effect beyond regulating fraudulent schemes that are already illegal under federal and state law would be to restrict good faith, otherwise-legal solicitations. Wisconsin already prohibits any merchant from misleading subscribers about their actual expiration date, for example. *See* Wis. Stat. § 100.18. Moreover, a subscriber must provide his or her express, verifiable authorization for payment to occur on the sale of any renewal service. ATCP § 127.38. Just last year, a prominent national publisher reached a settlement with the State of Wisconsin over its automatic renewal and renewal disclosure practices. This settlement may arguably have accomplished much of what S.B. 125 is intended to achieve – but occurred under existing law and without the proposed provisions in S.B. 125.

Federal law also prohibits deceptive practices (15 U.S.C. § 45), billing consumers for merchandise mailed without prior express consent (39 U.S.C. § 3009), the failure to comply with a consumer’s request for cancellation (16 C.F.R. § 435.1), and any fraudulent scheme involving the use of the mail, the Internet, or the telephone (18 U.S.C. §§ 1341, 1343).





State of Wisconsin  
Jim Doyle, Governor

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**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

April 25, 2007

The Honorable Robert Wirsch, Chair  
Committee on Small Business, Emergency Preparedness,  
Workforce Development, Technical Colleges and Consumer Protection

**Re: SB 125 relating to solicitations for the renewal of a subscription to a periodical.**

Dear Senator Wirsch:

Thank you for giving the Department of Agriculture, Trade & Consumer Protection the opportunity to testify for information regarding SB 125.

We support the idea behind SB 125. Few consumers keep track of when their magazine and other periodical subscriptions expire and when they receive a subscription renewal notice, they generally believe that the reason for the notice is that their subscription expires soon. This belief is enhanced by vague and/or misleading wording in the notice and the frequent lack of any clear and unambiguous statement that the current subscription expires on "x" date. For these reasons we firmly believe legislation in this area is needed. However, we also believe that changes are necessary if the proposed legislation is to be effective at protecting Wisconsin consumers.

✓ SB 125 prohibits a person from sending a mailing that solicits a renewal to a periodical more than six months before the expiration date of the subscriber's current subscription. In addition, the renewal solicitation must indicate the date on which the subscriber's current subscription will expire. However, the bill does not require that the subscription renewal clearly and conspicuously state the expiration date of the subscriber's subscription in terms understood by the consumer. This is important because often periodicals use a numerical coding for the expiration date on their renewal notices that tells the company when the subscription expires but means nothing to a consumer unless they have a "decoder ring" to help them out.

We are also concerned with the language "notwithstanding s. 814.04(1)" used on page 2, line 10 in the pecuniary loss section of the bill and believe it should be removed. There are many well established laws (i.e. s. 100.20 and 100.18) that allow for reasonable attorneys fees without mentioning s. 814.04. We believe that including this language in this particular legislation may lead courts to believe that since the language in the various sections is different, a different meaning must have been intended. Since we do not believe that SB125 is intended to mean anything other than that a consumer can commence a private civil action and if successful, collect their actual attorney's fees

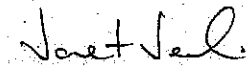
*Agriculture generates \$51.5 billion for Wisconsin*

instead of some a set amount of \$100, \$300 or \$500 as set forth in s. 814.94(1), we request that this provision be removed.

Finally, on a technical note, we don't believe this bill intends to regulate a free subscription to a magazine, newspaper or newsletter such as a church bulletin or other types of free publications, but rather those for which payment is required. Therefore we believe the definition of "periodical" should include "for consideration" at the end of the sentence on page 1, line 6.

We thank the Committee for the opportunity to provide comments on SB 125.

Respectfully,



Janet Jenkins

Administrator

Division of Trade & Consumer Protection